

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

THE JOINT PETITION OF KENTUCKY-  
AMERICAN WATER COMPANY,  
THAMES WATER AQUA HOLDINGS  
GmbH, RWE AKTIENGESELLSCHAFT,  
THAMES WATER AQUA US HOLDINGS, INC.,  
APOLLO ACQUISITION COMPANY AND  
AMERICAN WATER WORKS COMPANY, INC.  
FOR APPROVAL OF A CHANGE IN  
CONTROL OF KENTUCKY-AMERICAN  
WATER COMPANY

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CASE NO. 2002-

**RECEIVED**  
AUG 28 2002  
PUBLIC SERVICE  
COMMISSION

**MOTION AND PETITION TO MODIFY ORDER**

Joint Petitioners Kentucky-American Water Company (Kentucky-American), Thames Water Aqua Holdings GmbH (Thames Holdings), RWE Aktiengesellschaft (RWE), Thames Water Aqua US Holdings, Inc., (TWUS) Apollo Acquisition Company (Apollo) and American Water Works Company, Inc. (AWW) pursuant to KRS 278.020 (4) and (5) request that the Public Service Commission (Commission) modify its Orders of May 30, 2002 and July 10, 2002 that approved the change of control of Kentucky-American resulting from the acquisition by Thames Holdings of the common stock of Kentucky-American's parent, American Water Works Company, Inc. Due to a change of German tax law, a new intermediary holding company, Thames Water Aqua US Holdings, Inc., has been created and is wholly owned by Thames Holdings. On completion of the merger agreement (Merger Agreement) between Thames Holdings, RWE, Apollo and AWW, TWUS will become the owner of the stock of AWW. It is this transfer of AWW stock to TWUS for which approval is sought.

In the Order of May 30, 2002, the Commission recognized the possibility of the creation of an intermediary holding company. The issue was again addressed in the Order on Rehearing dated July 10, 2002. In that order on page 4, the Commission found that the creation of TWUS does not alter the result of the proposed transaction. On page 6 of that order, the Commission said that because the creation of TWUS is a part of the overall transaction involving RWE's and Thames Holdings' acquisition of Kentucky-American, approval of its acquisition of control could be obtained by requesting a modification of the May 30 order. The Joint Petitioners understand the Commission's declaration in the order of July 10, 2002, that approval of this modification of the transaction could be by requested by motion in Case No. 2002-00018. Given the current circumstances of three appeals of the prior orders in Case No. 2002-00018 pending in Franklin Circuit Court, however, the Joint Petitioners are submitting this Motion and Petition to establish a new docket for the purpose of avoiding a prolonged delay in the proceedings over the jurisdictional status of the appellate cases and this proposed modification to the transaction.

### **I. THE PARTIES**

1. Kentucky-American, is a corporation of the Commonwealth of Kentucky, with its principal office located at 2300 Richmond Rd, Lexington, KY 40502, and is a regulated public utility organized and operating under the laws of the Commonwealth of Kentucky.

2. AWW is incorporated in Delaware. Its principal office is located at 1025 Laurel Oak Road, Voorhees, N.J. 08043. It is a publicly traded water and wastewater services company.

3. Thames Holdings is a company organized under the laws of the Federal Republic of Germany and a wholly-owned subsidiary of RWE. Its principal office is Opernplatz 1, 45128 Essen, Germany.

4. RWE is a corporation organized under the laws of the Federal Republic of

Germany. Its principal office is located at Opernplatz 1, 45128 Essen, Germany.

5. Thames Water Plc (Thames) is a public limited corporation organized under the laws of England and Wales with its principal office located at 14 Cavendish Place, London, United Kingdom. Thames operates the water business of Thames Holdings.

6. Apollo Acquisition Company is a company formed to facilitate the transfer of stock of AWW and to be an intermediary holding company for purposes of completing the transaction between RWE, Thames and AWW. It will cease to exist when the merger with AWW is completed.

7. TWUS is a Delaware corporation formed on July 26, 2002, and is wholly owned by Thames Holdings. Its purpose is to hold the stock of AWW and all of Thames Holdings' water interests in the United States, which will allow the filing of a consolidated federal tax return. A copy of its articles of incorporation is attached as exhibit 1.

a. TWUS's operations will consist of holding the stock of the Thames Holdings' water interests in the United States and the filing of a consolidated tax return for those businesses. It will have no role in the operations of Kentucky-American.

b. TWUS will be managed by existing staff and have no additional employees. As needed, employees will be made available to TWUS from AWW to perform needed functions. The cost of any such work will not be charged in any manner to Kentucky-American.

c. TWUS will have no direct role in the operations of Kentucky-American. There will be no effect on the post transaction operations or management of KAWC. There will be no commercial transactions between TWUS and Kentucky-American.

8. Pursuant to the Commission's observation at page 11 of the Order of May 30, 2002 in this proceeding that "the better practice is for all corporate entities to jointly apply for Commission approval", AWW, RWE, Apollo and TWUS, by this Motion and Petition submit to the jurisdiction of the Commission in this proceeding.

## **II. THE MODIFICATION**

9. As a result of the creation of TWUS, on completion of the Merger Agreement between Apollo and AWW, AWW will become a wholly-owned subsidiary of TWUS, which is a wholly-owned subsidiary of Thames Holdings.

10. Kentucky-American will continue to be a wholly-owned subsidiary of AWW and will continue to exist as a Kentucky public utility corporation subject to the jurisdiction and regulation of the Commission. A copy of the proposed organizational chart is attached as exhibit 2.

11. During the course of the Commission's review of the transaction, the organizational chart, attached as exhibit 3 was provided. That chart indicated that an intermediary holding company to be owned by Thames Holdings may be formed to hold the stock of AWW. TWUS is the company so formed. Thus, the organization proposed in the case, remains as anticipated.

## **III. CHANGE OF GERMAN LAW NECESSITATING MODIFICATION**

12. On December 25, 2001, German foreign transaction tax law changed. A copy of the English translated version of that law is attached as exhibit 4.

13. This change in the law made it financially desirable to create an intermediary holding company to take advantage of the law. The advantage created is the ability of RWE and Thames Holdings to file a consolidated tax return, incorporating all of the existing Thames Holdings' businesses in the United States and the AWW businesses. This will be less expensive from an administrative perspective than filing multiple returns and will allow payment of taxes calculated on the net profits of all entities in the consolidated group. This could result in potential future benefits in that it may be possible to recognize for tax purposes losses that otherwise might not have been recognized. It is this future opportunity for tax savings together with the current administrative cost savings that led to the financial desirability of this action.

14. While there was no law that prevented RWE or Thames Holdings from filing a consolidated US tax return, prior German law with respect to the payment of intra-group dividends outside Germany resulted in each payment of dividends being a taxable event. As a result, under prior German law, the most tax efficient structure was one with as few intermediaries as possible.

15. Both Thames Holdings' United States operations and AWW are currently tax paying entities on a consolidated basis, however to take advantage of the change in the law, the consolidated tax return must be filed by the company that owns all of the Thames Holdings' United States operations. Because AWW will not own all of Thames Holdings' United States operations, it is necessary to include in the new corporate structure an entity that is owned by Thames Holdings and which in turn, owns all of Thames Holdings operations in the United States.

16. The decision to take advantage of this opportunity was made in June, 2002.

17. There are no immediate tax benefits to be recognized.

18. There will be no effect on Kentucky-American either in the form of additional costs or tax savings. Because Kentucky-American generates taxable income, and its tax expense is calculated on a stand alone basis for ratemaking purposes, the filing of a consolidated return at the parent level will have no effect on Kentucky-American's rates.

19. Kentucky-American will have no commercial transactions with TWUS.

20. No costs will be passed on to Kentucky-American by or as a result of the formation of the intermediate holding company.

#### **IV. JURISDICTION AND REGULATORY APPROVALS**

21. This Motion and Petition is being filed pursuant to KRS 278.020(4), KRS 278.020(5) and the Order of July 10, 2002.

22. Although there will be no actual or book transfer of any stock of any operating utility within the contemplation of 278.020, there will be an indirect transfer of control of Kentucky-American.

23. After considering the factors listed in KRS 278.020(4) and 278.020(5), the Commission in the Order of May 30, 2002 in Case No. 2002-00018 found that Thames Holdings and its affiliated companies have the financial, managerial and technical abilities to cause Kentucky-American to continue to provide reasonable service and that the change in control is in "accordance with law, for a proper purpose and is consistent with the public interest".

24. None of the findings or conclusions of law contained in the orders in Case No. 2002-00018 will change as a result of the creation of TWUS.

**V. THE TRANSACTION IS IN ACCORDANCE WITH LAW**

25. The modification will occur only after regulatory approvals are obtained.

26. The "Merger Agreement" will be consummated in accord with Commission requirements.

27. The modification requires no additional approval by AWW's shareholders.

28. There are no federal regulatory approvals required for the formation of TWUS.

29. The modification will not affect the regulatory status of Kentucky-American.

**VI. THE TRANSACTION IS FOR A PROPER PURPOSE**

30. The modification will have no effect on the transaction approved by the Commission or its determination that it is for a proper purpose.

**VII. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST**

31. There will be no change of operations or regulation from the public's perspective as a result of this modification.

32. There will be no change in the implementation or enforcement of the

conditions imposed by the Commission and agreed to by the participants.

33. There will be no change in the conditions or commitments determined by the Commission in this case to be in the public interest.

**VIII. KENTUCKY-AMERICAN WILL CONTINUE TO HAVE THE FINANCIAL, MANAGERIAL AND TECHNICAL ABILITY TO PROVIDE REASONABLE SERVICE**

34. The modification will not cause any changes in the existing management and officers of Kentucky-American. Thus, after the closing Kentucky-American will continue to have proven management experience and capability in the provision of safe, adequate and reliable service to the public.

35. The modification will not affect Kentucky-American operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations.

36. The modification will not affect the creation of an enterprise that will be able to serve the state's growing demand for potable water.

37. The modification will not result in any increase in rates, change of tariffs or diminution of service that would not have occurred otherwise.

38. The modification will have no negative effect on Thames Holdings' management expertise or Kentucky-American's access to that expertise.

39. The modification will not affect Kentucky-American's ability to draw upon the broad pool of expertise and abilities of a large, diverse company.



40. The modification will not affect the expanded opportunities for employee career advancement and professional growth.

#### **IX. RECORD FOR REVIEW**

41. The parties adopt and incorporate by reference for this Motion and Petition the entire record of Case No. 2002-0018.

#### **X. NOTICES**

42. All correspondence and communications in connection with this proceeding are to be addressed to the following:

On behalf of Thames Holdings, TWUS, Apollo and RWE:

John N. Hughes  
124 West Todd St.  
Frankfort, KY 40601  
(502) 227-7270

On behalf of Kentucky-American and AWW:

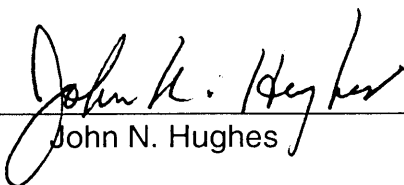
Lindsey W. Ingram, Jr.  
Robert M. Watt, III  
Stoll, Keenon & Park, LLP  
300 West Vine St., Suite 2100  
Lexington, KY 40507-1801  
(859) 231-3000

**WHEREFORE**, the Petitioners request that the Commission issue an Order, pursuant to KRS 278.020, approving the change of control as contemplated by the modification by and among RWE, AWW, Apollo, Thames Holdings and TWUS under the terms of which TWUS will acquire indirect control of Kentucky-American following the merger of Apollo and AWW and any other authorization required by law.


Respectfully submitted,

John N. Hughes  
Attorney at Law  
124 West Todd St.  
Frankfort, KY 40601  
502 227-7270

Attorney for Thames Water Aqua  
Holdings GmbH, Apollo Acquisition Company,  
TWUS and RWE

By:   
John N. Hughes

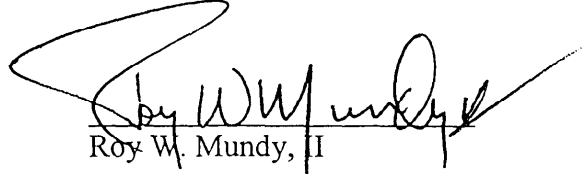
Lindsey W. Ingram, Jr.  
Robert M. Watt, III  
Stoll, Keenon & Park, LLP  
300 West Vine St. Suite 2100  
Lexington, KY 40507-1801  
859-231-3000  
Attorneys for Kentucky-American  
Water Company and American Water Works  
Company, Inc.

By:   
Robert M. Watt, III

Dated: August 28, 2002

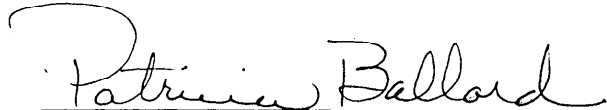
## VERIFICATION

Roy W. Mundy, II, President of Kentucky-American Water Company, after being sworn, states that the contents of the foregoing Motion are true and correct to the best of my knowledge and belief.



Roy W. Mundy, II


Sworn and subscribed to before me, a notary public, by Roy W. Mundy, II on the  
26<sup>th</sup> day of August, 2002.



Patricia Ballard  
Notary Public

## VERIFICATION

Ellen C. Wolf, Vice President and Chief Financial Officer of American Water Works Company, Inc., on behalf of American Water Works Company, Inc., and after being sworn states that the contents of the foregoing Motion are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
ELLEN C. WOLF

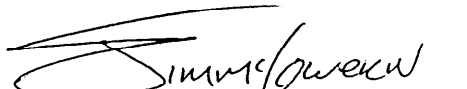
Sworn and subscribed to before me, a Notary Public, by Ellen C. Wolf on this 28 day of August, 2002.

My Commission expires: 6/17/07

  
\_\_\_\_\_  
NOTARY PUBLIC

## VERIFICATION

James McGivern, Managing Director of the Americas of Thames Water Plc, on behalf of Thames Water Aqua Holdings GmbH, Thames Water Aqua US Holdings, Inc., and Apollo Acquisition Company, after being sworn states that the contents of the foregoing Motion are true and correct to the best of my knowledge and belief.

  
James McGivern

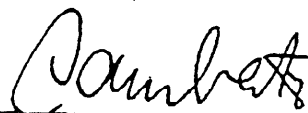
Sworn and subscribed to before me, a notary public, by James McGivern on the 16<sup>th</sup> day of August, 2002.

  
Notary Public

Commission expires:  
June 22, 2004

## VERIFICATION

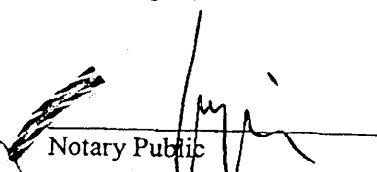
Georg K. Lambertz, Vice President Finance, RWE AG, after being sworn, states that the contents of the foregoing Motion are true and correct to the best of my knowledge and belief.



Georg K. Lambertz

Number 49 of the roll of deeds for 2002

Sworn and subscribed to before me, a notary public, by Georg K. Lambertz on the 27. day of August, 2002.



Notary Public

Dr. Imiger

Notar

